

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3803 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

DASHRATHJI JUHAJI THAKOR

Versus

DISTRICT MAGISTRATE

Appearance:

MR VIJAY H PATEL for Petitioner
MR KC SHAH, AGP for Respondents.

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 09/09/96

ORAL JUDGEMENT

1. By way of this petition under Article 226 of the Constitution of India the petitioner-detenu-Dashrathji Juhaji Thakor has brought under challenge the detention order dated 6/4/1996 rendered by the respondent no.1 u/S. 3(1) of the Gujarat Prevention of Anti-Social Activities Ac, 1985 (Act No. 16 of 1985), hereinafter referred to as 'the PASA Act'.

2. The grounds on which the impugned order of detention has been passed appear at Annexure-C to the petition. They inter-alia indicate that the petitioner by himself and with the aid of his associates has been carrying on criminal and anti-social activities of manufacturing and selling country liquor and also creating atmosphere of fear amongst the witnesses and other persons. Following prohibition offences have been registered in the Sarkhej Police Station against him :-

1) CR 35/93 U/S.65F of Bombay Prohi.Act

3000 litres of wash valued at Rs.12,000/-

Pending in Court.

2) CR 250/93 U/S.65F of Bombay Prohi.Act

180 litres of wash valued at Rs.720/-.

Pending in Court.

3) CR 310/93 U/S. 65F of Bombay Prohi. Act

Ahmedabad 190 litres of wash valued at Rs.310/-.

(Rural) Pending in Court.

TF Branch

4) CR 259/95 U/s. 65F of Bombay Prohi. Act

320 litres of wash valued at Rs.1200/-.

Pending in Court.

5) CR 13/95 U/s. 65F of Bombay Prohi. Act.

100 litres of wash valued at Rs.400/-

Pending in Court.

6) CR 70/95 U/s. 65F of Bombay Prohi. Act

Ahmedaba 200 litres of wash valued at Rs.800/-

(Rural) Pending in Court.

TF Branch.

All the aforesaid offences relate to manufacturing of country liquor, last of which is stated to have been committed on or around 1/3/1995, that is to say, more than a year before the date of impugned detention order.

3. Over and above the aforesaid cases of prohibition, it has been recited in the grounds of detention that the confidential statements have been given by some witnesses alleging that the petitioner has been a head strong person and has been threatening and beating the witnesses in public and creating an atmosphere of fear amongst the people collected at the time of the incident/s in question.

4. I have heard the learned advocate for the

petitioner and the Ld. AGP for the State. The petitioner has challenged the aforesaid order of detention on number of grounds inter-alia on the ground that although no privilege has been claimed u/S. 9(2) of the PASA Act by the detaining authority. The copies of the statements supplied to the detenu do not indicate the names and addresses of the witnesses. Thus, the particulars with regard to the witnesses have been withheld from the detenu. Withholding of such material in respect whereof no privilege was claimed deprived the detenu of his right to make effective representation. Reliance has been placed on a decision of a Division Bench of this Court in the case of Milan Dinkarraai Shukla v/s. District Magistrate, Rajkot & ors. decided on 5/12/1988 in Special Civil Application No.424 of 1988 reported in 1989 (1) GLH (UJ) 16. Reference has been made to the head note (B), which would read as under :-

'With regard to the copies of statements supplied to the detenu showing his involvement in certain offences, the detaining authority has claimed privilege under section 9(2) of the Act. However, even though privilege was claimed for the names and addresses of the witnesses, other particulars were also not provided in some of the statements. Withholding of such material in respect whereof no privilege was claimed deprived the detenu of his right to make effective representation. For that reason also the continued detention of the petitioner is illegal.'

A reference has also been made to another decision of Division Bench of this Court in the case of Govind Madhu Kathiawari v/s. Commissioner of Police & ors. reported in 1992 (1) G.L.H. 62. The following observations of the Division Bench appearing in para. 3 have been relied upon :-

'The privilege exercised by the detaining authority in the present case under S.9(2) of the Act is not available to the detaining authority as the privilege exercised by the detaining authority is "in the interest of public order" and not "in the public interest". The phraseology of using words "public order" instead of "public interest" has vitiated the privilege order. The detaining authority has committed blunder in using words "public order" instead of words "public interest". There was no requisite subjective satisfaction of the detaining authority for passing the impugned order under S.

5. In reply Mr. K C Shah, Ld. AGP for the State submitted that substance of the grounds of detention that the statements were confidential statements. In my opinion merely because the statements have been said to be confidential statements it cannot be inferred that the detaining authority has claimed privilege u/S. 9(2) of the PASA Act. As a matter of fact, the detenu is left in dark about whether privilege is claimed or not and if claimed, on what grounds. This would obviously result in the detenu being deprived of making effective representation. In my opinion, the ratio in both the aforesaid decisions would apply with greater force to the present case.

6. In view of what is stated above, it has to be found that the continued detention of the petitioner has been rendered illegal. Hence, the same is required to be quashed and set aside. Order accordingly. The petitioner-detenu-Dashrathji Juhaji Thakor shall be forthwith set at liberty if he is not required to be detained in any other case. Rule made absolute accordingly.

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